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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 11, 2000

Carol Matthey
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: *CC Docket No. 98-141, Response to SBC's Requests for Interpretation, Waiver or Suspension of Merger Conditions Affecting the Ownership of Plugs/Cards and OCDs*

Dear Ms. Matthey,

In response to your request, the DSL Access Telecommunications Alliance ("DATA")¹ submits this ex parte letter to clarify its position on the narrow ownership issues of certain equipment necessary to transmit ADSL in the fiber-fed Digital Loop Carrier ("DLC") loop network topology being deployed by SBC, as posed by SBC in its *February 15th Letter*.² DATA urges the Commission to find that, while the xDSL DLC cards and the so-called "Optical Concentration Devices" are Advanced Services Equipment within the context of the Merger Conditions, SBC's advanced services affiliates must own the xDSL DLC cards, and SBC should be permitted to own the "Optical Concentration Device."

SBC urged the Commission to interpret, waive or modify the Merger Conditions to determine whether SBC or its advanced services affiliates, should own the "Optical Concentration Device" to be located in SBC central offices, and the xDSL DLC cards to be located in the SBC remote terminals, under SBC's rollout of its "Project Pronto" (*i.e.*, SBC's deployment of a fiber-fed DLC loop network topology throughout its 13-state service territory that is capable of carrying DSL traffic). The Merger Conditions clearly require SBC's advanced services affiliates to own all Advanced Services Equipment.³ In its *February 15th Letter*, SBC asked the Commission to make a determination whether the "Optical Concentration Device" and the xDSL DLC cards were Advanced Services Equipment as contemplated by the Merger Conditions. If the

¹ DATA comprises Rhythms NetConnections, Inc., Bluestar Communications, Covad Communications Company, HarvardNet, Inc., and NorthPoint Communications, Inc. as providers of DSL services.

² Letter from Paul K. Mancini, Vice President & Assistant General Counsel, SBC Communications, Inc., to Lawrence E. Strickling, Chief of Common Carrier Bureau, FCC (Feb. 15, 2000) ("*February 15th Letter*").

³ *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications, Inc., Transferee*, CC Docket No. 98-141, *Memorandum and Order*, FCC 99-279, Appendix C (rel. Oct. 8, 1999) ("Merger Conditions").

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Commission determined that this equipment was Advanced Services Equipment, SBC also requested that the Commission either waive or suspend the Merger Conditions to allow SBC to own such equipment.

DATA filed Comments and Reply Comments with the Commission concluding that the limited description of the fiber-fed DLC network reconfiguration provided in SBC's *February 15th Letter* prevents the Commission from making a reasoned determination on whether the request is consistent with the Telecommunications Act and the Commission's rules and decisions.⁴ On April 6, 2000,⁵ SBC filed yet another voluminous ex parte with the Commission further modifying its proposed Broadband UNE service offering. These repeated and extensive revisions to its waiver request create a constantly-moving target that seriously undermines the ability of interested parties to comment on SBC's proposal. Indeed, unless commenters have a full and fair opportunity to review and comment on SBC's constantly changing proposal, the Commission cannot and should not act with regard to SBC's request. As SBC has been planning this new network architecture and the equipment needed to implement it since late 1998, the Commission should not now be forced to rush to judgment. Accordingly, while this ex parte cannot and does not address the changes arising from SBC's latest submission, DATA reserves further remarks on SBC's ex parte for a subsequent filing that reflects a complete review of the changes that SBC has now proposed.

In its Comments and Reply Comments, DATA did, however, explain its tentative conclusion on the appropriate Commission action with regard to the ownership of the "Optical Concentration Device" and the xDSL DLC cards. Specifically, DATA clearly demonstrated that SBC cannot own the Alcatel xDSL cards that will plug into the Alcatel DLCs in the remote terminal locations.⁶ DATA did not object to SBC owning the "Optical Concentration Device" to be placed in the SBC central offices, so long as the Commission explicitly recognizes SBC's unbundling obligations implicated by ownership of the "Optical Concentration Device."⁷

A. SBC's ADVANCED SERVICES AFFILIATES MUST OWN THE xDSL DLC CARDS.

The Commission should conclude that the xDSL DLC cards are Advanced Services Equipment that the Merger Conditions require SBC's advanced services affiliates to own. No interpretation of the Merger Conditions is necessary, because the definition of Advanced Services Equipment on its face clearly includes the xDSL DLC cards. The Merger Conditions require SBC's advanced services affiliates to own all Advanced Services Equipment, such as "DSLAMs or functionally equivalent equipment."⁸ The cards plugged into the DLC chassis located in the

⁴ Comments of DATA on SBC's Request for Interpretation, Waiver or Modification of the SBC/Ameritech Merger Conditions, CC Docket No. 98-141, ASD File No. 99-49, et al. (March 3, 2000)("DATA Comments").

⁵ The complete ex parte materials were not provided to any member of DATA until Monday, April 10, 2000, when Rhythms obtained a copy from SBC counsel.

⁶ DATA Comments at 10.

⁷ DATA Comments at 9.

⁸ Merger Conditions, ¶ 3.d.

remote terminal contain integrated DSLAM functionality. The xDSL DLC cards are therefore Advanced Services Equipment as contemplated by the Merger Conditions.⁹

Furthermore, the Commission should not waive or suspend the Merger Conditions to allow the ownership of the xDSL DLC cards to remain with SBC. As the xDSL DLC cards are clearly Advanced Services Equipment, SBC is required to obtain a waiver or suspension of the Merger Conditions in order to own the xDSL DLC cards. SBC's ownership of the xDSL DLC cards, however, would foreclose consumers' choices of advanced services, by precluding competitors' ability to deploy the varieties of ADSL and other DSL-based services necessary to make the market competitive. This result directly contradicts a fundamental premise used by the Commission in its interpretation of the Telecommunications Act of 1996—competition in the local telecommunications requires the provisioning of facilities-based services.

SBC has acknowledged that the limited space in its remote terminals will likely prohibit the collocation of DSLAMs within most remote terminals.¹⁰ As a result, collocating xDSL cards, as well as cards supporting other types of DSL, within the DLC will allow competitors to continue to own the facilities necessary to offer competitive DSL services. Facilities-based competition is the only manner in which to ensure the development and implementation of an open, competitively neutral fiber-fed DLC loop network. For this reason, the CLECs, including SBC's advanced services affiliates, must own the xDSL DLC cards and be allowed to collocate such cards within SBC's remote terminals on a nondiscriminatory basis in compliance with the *Advanced Services Order*, the *Line Sharing Order* and the *UNE Remand Order*.¹¹ The Commission, therefore, should not waive or suspend the Merger Conditions to allow SBC to own the xDSL DLC cards.

B. SBC MUST OWN THE "OPTICAL CONCENTRATION DEVICE."

SBC's so-called "Optical Concentration Device" is in reality a carrier-class ATM core switch.¹² As such, it is clearly Advanced Services Equipment. While the ATM Switch/OCD is Advanced Services Equipment, the Commission should waive the requirement that SBC's advanced services affiliates own the ATM Switch/OCD, in order to enable competitors to compete fully and fairly with SBC's advanced services affiliates by using the new SBC fiber-fed DLC loop network topology to offer DSL-based services. SBC has chosen to place an ATM Switch/OCD

⁹ The *UNE Remand Order* defines the functionality of a DSLAM to include:

(1) the ability to terminate copper customer loops (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); (2) the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; (3) the ability to extract data units from the data channels on the loops; and (4) the ability to combine data units from multiple loops onto one or more trunks that connect to a packet switch or packet switches.

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order, FCC 99-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*") ¶ 303.

¹⁰ *February 15th Letter* at 2.

¹¹ *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order, 14 FCC Rcd 4808, et al. (rel. Mar. 31, 1999) ("*Advanced Services Order*"); *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order, FCC 99-355, et al. (rel. Dec. 9, 1999) ("*Line Sharing Order*"); *UNE Remand Order* ¶¶ 217-223.

¹² SBC has announced that its "Optical Concentration Device" ("OCD") will be a Lucent CBX 500 ATM switch. As the Commission is aware, Asynchronous Transfer Mode switches are packet-switching devices.

in its central offices to receive and disaggregate the ADSL bit stream from the DLC in the SBC remote terminals. Since the *February 15th Letter*, the members of DATA have discovered more information about SBC's plans to deploy and configure the approximately 1,000 ATM Switches/OCDs in its 13-state territory.

As noted above, the ATM switches that SBC plans to deploy are carrier-class core switches. They normally are deployed as part of an ATM "cloud." That is, they are interconnected to each other with fiber-optic transport facilities to form a packet-switched network. SBC's proposed configuration, however, would not make these ATM switches part of an ATM cloud. Instead, SBC plans to deploy these ATM switches as unconnected, standalone "island" switches that will perform one primary function (at least for now): separating each CLEC's ATM packetized bitstream from the common ATM packetized bitstream coming from the SBC remote terminals, and handing off the appropriate packetized bitstream to each CLEC, including SBC's advanced services affiliates. Thus, under SBC's proposed network configuration, the ATM Switches are the only means by which the ADSL-based traffic of multiple CLECs can be aggregated and disaggregated.¹³¹⁴

In establishing the Merger Conditions, the Commission strove to ensure that the merger would be in the public interest based on the provisioning of services under the existing network. The Commission, however, did not envision the network topology proposed in SBC's *February 15th Letter*. While the ATM Switch/OCD is Advanced Services Equipment, the Commission should waive the Merger Condition to allow SBC to own the OCD in a manner that will ensure competition in the advanced services market.

In the *UNE Remand Order*, the Commission recognized certain unbundling obligations of the ILECs associated with packet switching. Specifically, ILECs must provide nondiscriminatory access to unbundled packet switching capability when there are no spare copper facilities available and no space in the remote terminal to collocate a DSLAM.¹⁵ Though not part of the ATM cloud, the ATM Switch/OCD is a packet switch subject to unbundling requirements. Because the ATM Switch/OCD is the only technically and economically feasible point at which competitors can obtain their ATM bitstreams under SBC's proposed new loop network topology, competitors must use the SBC ATM Switch/OCD in the SBC central offices. Thus, to ensure that consumers continue to reap the benefits of advanced services competition, the Commission

¹³ DATA does not address herein the fact that it is technically feasible, and indeed far more economical, to deploy far fewer ATM switches, in a more centralized configuration, to handle the ADSL-based traffic that is the subject of SBC's waiver request. We also do not address the technically feasible alternative service arrangements that would obviate the need for a central-office-based ATM switch entirely, including the development of a multiport DLC, under which each CLEC could obtain its own separate ATM bitstream at the DLC, which could then be multiplexed with other traffic onto existing fiber facilities and transported to a SONET-based handoff at the serving central office or at any other location served by SONET-based facilities. Instead, our comments here address only the narrow request made by SBC.

¹⁴ DATA also wishes to emphasize that our agreement with the SBC's Request for Waiver to own the ATM Switches/OCDs should not be read to indicate any agreement with any possible SBC proposal for the recovery of the costs of such devices. Indeed, as indicated above, DATA believes it is already clear that SBC's choice of the type, number, and location of these devices is massive overkill for the function that they will perform. There are far more cost-effective ATM switching/routing devices available today, even for central office-based placement. DATA therefore explicitly reserves its rights to challenge any SBC proposal for cost recovery concerning the ATM Switches/OCDs, and to propose its own TELRIC-compliant alternatives.

¹⁵ *UNE Remand Order*, ¶¶ 306-317; see also 47 C.F.R. § 51.319(c).

should explicitly affirm that SBC must provide competitors with nondiscriminatory access to the OCD.

Once the Commission makes a clear determination that, while the OCD is Advanced Services Equipment, SBC must own and unbundle the OCD on a nondiscriminatory basis, the Commission should waive the Merger Conditions with respect to the ownership of the OCD by SBC, for the limited purpose of receiving and handing off ATM-encoded traffic to and from CLECs.

C. CONCLUSION

For all of the reasons previously expressed, the Commission should (1) conclude that within the definition provided in the Merger Conditions the xDSL DLC cards are Advanced Services Equipment suitable for collocating within the DLCs in SBC's remote terminals; (2) deny SBC's requests for waiver or suspension of the Merger Conditions with regard to the ownership of the xDSL DLC cards; (3) recognize SBC's obligation to unbundle the ATM Switches/OCDs to be located in SBC's central offices, even though they are Advanced Services Equipment; and (4) grant SBC's requests for waiver of the Merger Conditions with regard to the ownership of the ATM Switch/OCD, for the limited purpose of receiving and handing off ATM-encoded traffic to and from CLECs.

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Respectfully submitted,



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